

**STAFF REPORT**

Meeting Date: June 12, 2002

**TO:** LAFCO Commissioners

**FROM:** Everett Millais, Executive Officer

**SUBJECT:** LAFCO 02-10 Russell Valley Municipal Water District Consolidation with Calleguas Municipal Water District

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**RECOMMENDATION:**

Continue action on this matter until July 17, 2002, or to a date certain as mutually agreed upon by the Commission and representatives for Russell Valley Municipal Water District and Calleguas Municipal Water District.

**DISCUSSION:**

Staff accepted this consolidation application for filing and noticed it for hearing in error. After accepting the application and publishing notice of hearing, staff learned that Revenue and Taxation Code provisions apply to the consolidation process. Specifically, Revenue and Taxation Code Section 99 requires the County Auditor-Controller to determine the estimated amount of property tax revenue Russell Valley Municipal Water District will receive for the current fiscal year and transmit this information to the Board of Supervisors. This same Code Section requires the Board of Supervisors to adopt a resolution agreeing to accept the future exchange of property tax revenues, before the LAFCO Executive Officer can issue a certificate of filing. Essentially, the Commission is precluded from taking any action at this time, except a continuance. Attached is a Memorandum from the County Counsel's Office, as LAFCO legal counsel, that responds to questions posed and provides additional background information.

**COMMISSIONERS AND STAFF**

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<b>COUNTY</b> Steve Bennett, Chair Kathy Long <i>Alternate:</i> Judy Mikels	<b>CITY</b> Linda Parks John Zaragoza <i>Alternate:</i> Evaristo Barajas	<b>SPECIAL DISTRICT</b> Jack Curtis John Rush <i>Alternate:</i> Dick Richardson	<b>PUBLIC</b> Louis Cunningham, Vice Chair <i>Alternate:</i> Kenneth M. Hess
<b>EXECUTIVE OFFICER</b> Everett Millais	<b>PLANNER III</b> Hollie Brunsky	<b>CLERK</b> Debbie Schubert	<b>LEGAL COUNSEL</b> Noel Klebaum

Once the Board of Supervisors adopts its resolution about the disposition of future property taxes, this matter can be accepted for filing and considered by LAFCO. Given that the Board of Directors of both Russell Valley Municipal Water District and Calleguas Municipal Water District have adopted essentially similar resolutions agreeing to the consolidation of both districts, LAFCO can only approve or modify the request (not deny). Once approved, a protest hearing (like a conducting authority protest hearing) must then be noticed and held. This is a process the Commission has delegated to the Executive Officer. After completion of the protest hearing, the Executive Officer will report the value and numbers of protests received to the Commission for final action, either ordering the consolidation or calling for an election.


While it is conceivable that action by the Board of Supervisors on this matter could occur by early July, in time for further notice and report preparation for consideration by LAFCO on July 17, such action by the Board has yet to be scheduled. Additionally, the representative for the Russell Valley Municipal Water District has indicated that he will not be available on July 17. Since LAFCO has not scheduled any meetings for August, if action on this matter cannot occur on July 17, the next regularly scheduled LAFCO meeting is September 18.

Additional information about the possible timing of action by the Board of Supervisors will be provided at the June 12 meeting. If action cannot occur on July 17, or if requested by Russell Valley and/or Calleguas, one possibility will be for LAFCO to schedule a special meeting in late July or early August. Possible dates for such a meeting are Wednesday, July 31 or Wednesday, August 2. If action cannot occur on July 17 and if no special meeting is scheduled, the earliest the first LAFCO action on this matter could occur would be September 18. It is requested that the Commissioners (regular members and alternates) check your calendars for your availability on July 31 or August 2, in case there is a desire to schedule a special meeting.

**MEMORANDUM  
COUNTY OF VENTURA  
COUNTY COUNSEL'S OFFICE**

May 30, 2002

TO: Everett Millais, Executive Officer  
Ventura Local Agency Formation Commission

FROM:  Noel A. Klebaum, Chief Assistant County Counsel

RE: CONSOLIDATION OF RUSSELL VALLEY AND CALLEGUAS  
MUNICIPAL WATER DISTRICTS - PROPERTY TAX ISSUES

You have reported that Russell Valley Municipal Water District ("RV") and Calleguas Municipal Water District (Calleguas) have submitted resolutions of application to the Local Agency Formation Commission ("LAFCO") requesting consolidation of the districts with Calleguas as the surviving entity. You also reported that all of the RV territory is currently within Calleguas's boundaries, that RV sold all of its assets to a private water company some time ago and has not provided any service since then, and that Calleguas wholesales water to the private company that purchased RV's assets. In essence, then, the purpose of the consolidation is to fold RV because the service it formerly provided has been privatized. You have also reported that RV receives a small property tax allocation. Based on this information, you posed the questions listed below.

**QUESTIONS PRESENTED**

1. What local agency will receive RV's property tax allocation when RV ceases to exist?
2. Does LAFCO have the power or responsibility to reassign the property tax allocation?
3. Does the Municipal Water District Act have any provisions bearing on the proposed consolidation?

## ANSWERS

**1. The Local Agency Which Will Receive the Property Tax Allocation Is Determined by the Board of Supervisors under Revenue and Taxation Code Section 99.**

Revenue and Taxation Code section 99 sets forth a detailed scheme for property tax exchanges necessitated by jurisdictional changes of local agencies. The auditor is responsible for adjusting the allocation of property tax revenue and the annual tax increment based upon determinations made in accordance with the section. (Rev. & Tax. Code, § 99, subd. (a).)

Subdivision (b) of section 99 specifies how that determination is to be made for the proposed consolidation of RV and Calleguas. Because the Board of Supervisors is empowered by the statute to negotiate property tax exchanges on behalf of special districts, it will determine which local agency will receive RV's tax allocation. The portions of subdivision (b) which describe the applicable procedure are (b)(3) through (b)(6) which are quoted below:

“(3) Within 45 days of notice of the filing of an application or resolution, the auditor shall notify the governing body of each local agency whose service area or service responsibility will be altered by the amount of, and allocation factors with respect to, property tax revenue estimated pursuant to paragraph (2) that is subject to a negotiated exchange.

“(4) Upon receipt of the estimates pursuant to paragraph (3) the local agencies shall commence negotiations to determine the amount of property tax revenues to be exchanged between and among the local agencies. . . .

“The exchange may be limited to an exchange of property tax revenues from the annual tax increment generated in the area subject to the jurisdictional change and attributable to the local agencies whose service area or service responsibilities will be altered by the proposed jurisdictional change. The final exchange

resolution shall specify how the annual tax increment shall be allocated in future years.

“(5) In the event that a jurisdictional change would affect the service area or service responsibility of one or more special districts, the board of supervisors of the county or counties in which the districts are located shall, on behalf of the district or districts, negotiate any exchange of property tax revenues. Prior to entering into negotiation on behalf of a district for the exchange of property tax revenue, the board shall consult with the affected district. The consultation shall include, at a minimum, notification to each member and executive officer of the district board of the pending consultation and provision of adequate opportunity to comment on the negotiation.

“(6) Notwithstanding any other provision of law, the executive officer shall not issue a certificate of filing pursuant to Section 56658 of the Government Code until the local agencies included in the property tax revenue exchange negotiation, within the 60-day negotiation period, present resolutions adopted by each such county and city whereby each county and city agrees to accept the exchange of property tax revenues.”

The initial inquiry in the process described in the statute is to determine which local agencies are included within the phrase “each local agency whose service area or service responsibility will be altered,” as provided in subdivision (b)(3). You have reported that *only* RV’s service area or service responsibility will be altered by the consolidation. The auditor must therefore give notice to RV of the required property tax information. That notice is a formality, however, because subdivision (b)(5) grants to the Board of Supervisors the power to negotiate on behalf of special districts. The auditor should, therefore, also notify the Board.

Because no local agency other than RV will have its service area or service responsibility altered by the consolidation, the Board has no one with whom to negotiate. It follows that, subject to its obligation to consult with the board of RV as specified in subdivision (b)(5), the Board of Supervisors should adopt a resolution as described in

subdivision (b)(6) specifying, in its discretion, which local agency or agencies will receive the RV property tax allocation.

Subdivision (b)(6) refers to, "resolutions adopted by each such county and city whereby each county and city agrees to accept the exchange of property tax revenues." A question which may arise is whether any city must adopt a resolution for the RV/Calleguas consolidation. Because, according to the information you have received, no city is a "local agency whose service area or service responsibility will be altered," none will be "included in the property tax revenue exchange negotiation"; therefore, the only resolution on the subject must come from the Board of Supervisors. (It is conceivable one or more county-city master property tax transfer agreements might address this general topic, but that would be a matter for the Board to consider in the adoption of its resolution.)

**2. LAFCO Does Not Have the Power or Responsibility to Reassign the Property Tax Allocation.**

You asked whether Government Code section 56886, which authorizes a variety of LAFCO conditions on proposals, gives LAFCO the power or responsibility to reassign the property tax allocation. It does not. All of the references to taxes in that section are to special, extraordinary or additional taxes which may be made the subject of LAFCO conditions. The RV ad valorem property tax allocation is neither special, nor extraordinary, nor additional.

Moreover, Revenue and Taxation Code section 99 makes it clear that property tax exchanges are to be the product of negotiations between or among the local agencies "whose service area or service responsibility will be altered," and are therefore not a matter for LAFCO to determine. LAFCO may not even initiate proceedings on the proposed jurisdictional change unless those local agencies have adopted the required property tax exchange resolutions. (*Greenwood Addition Homeowners Assn. v. City of San Marino* (1993) 14 Cal.App.4th 1360, 1377 ["A certificate of filing is a precondition to LAFCO's hearing an application, and a property tax revenue agreement is a precondition to a certificate of filing. Absent either, the LAFCO is powerless to proceed further."]; Rev. & Tax. Code, § 99, subd. (b)(6).) If LAFCO modifies the proposal, it must allow the local agencies to renegotiate the property tax exchange. If, following LAFCO's modifications, new resolutions from the local agencies are not forthcoming

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within 15 days, LAFCO's consideration of the proposal is automatically terminated. (Rev. & Tax. Code, § 99, subd. (b)(7)).

**3. The Municipal Water District Act Contains Only One Provision Which Might Affect LAFCO's Consideration of the Proposal.**

The only provision of the Municipal Water District Act (Wat. Code, § 71000 et seq.) which could affect LAFCO's consideration of the proposal is Water Code section 71250.1. That section authorizes LAFCO to increase the number of directors of the consolidated or reorganized district.

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